

Rule 109. Leave to Proceed *In Forma Pauperis***Rule 109.01 Authorized Relief**

A party who is unable to pay the expenses of appeal may apply for leave to proceed *in forma pauperis*, which may include waiver of the filing fee and any cost bond required under Rule 107 or Rule 116, and payment of costs for the transcript and reproducing briefs.

(Added effective March 1, 2001; amended effective July 1, 2016.)

Rule 109.02 Motion for Leave to Proceed *In Forma Pauperis* in the Court of Appeals

A party who desires to proceed *in forma pauperis* in the Court of Appeals shall file in the trial court a motion for leave so to proceed, together with an affidavit showing the party's inability to pay fees and costs and a copy of the party's statement of the case as prescribed by Rule 133.03, showing the proposed issues on appeal. Any such motion by a party initiating an appeal shall be filed on or before the date the appeal is commenced. The trial court shall rule on the motion within 15 days after it is filed, unless the Court of Appeals grants additional time. The party shall file a copy of the motion with the clerk of the appellate courts simultaneously with the notice of appeal or the petition that initiates the appeal.

The trial court shall grant the motion if the court finds that the party is indigent and that the appeal is not frivolous. If the motion is denied, the trial court shall state in writing the reasons for the denial. The party shall promptly file a copy of the trial court's order on the motion with the clerk of the appellate courts.

If the trial court grants the motion, the party may proceed *in forma pauperis* without further application to the Court of Appeals. If a transcript is to be prepared for appeal, the party shall file the certificate as to transcript required by Rule 110.02, subd. 2(a), within ten days from the date of the trial court administrator's filing of the order granting leave to proceed *in forma pauperis* or within ten days after filing the notice of appeal, whichever is later.

If the trial court denies the motion, the party shall, within ten days from the date of the trial court administrator's filing of the order, either:

(a) pay the filing fee, post any required cost bond, and file a completed transcript certificate, if a transcript is required; or

(b) serve and file a motion in the Court of Appeals for review of the trial court's order denying *in forma pauperis* status. The record on the motion shall be limited to the record presented to the trial court.

(Added effective March 1, 2001; amended effective July 1, 2016.)

Rule 109.03 Civil Commitment and Juvenile Proceedings

A motion to proceed *in forma pauperis* on appeal from a civil commitment or juvenile proceeding may be granted based on the party's financial inability to pay appeal expenses alone. A finding that the appeal is not of a frivolous nature is not required.

(Added effective March 1, 2001.)

Rule 109.04 Motion for Leave to Proceed *In Forma Pauperis* in the Supreme Court

A party who desires to proceed *in forma pauperis* in the Supreme Court shall file in that court a motion for leave so to proceed. Any such motion by a party initiating an appeal shall be filed on

or before the date the Supreme Court proceeding is commenced. The motion shall specify the fees and costs for which *in forma pauperis* relief is sought. The motion shall be accompanied by:

(a) a copy of the order, if any, granting the party leave to proceed *in forma pauperis* in the court whose decision is to be reviewed by the Supreme Court and an affidavit stating that the party remains indigent; or

(b) an affidavit showing the party's inability to pay the fees and costs for which relief is sought.

(Added effective March 1, 2001.)

Rule 109.05 Suspension of Time Periods

The time periods for a party to pay the filing fee, post a cost bond if required under Rule 107 or Rule 116, and file a transcript certificate are suspended during the pendency of that party's timely motion to proceed *in forma pauperis*.

(Added effective March 1, 2001; amended effective July 1, 2016.)

Advisory Committee Comment - 2000 Amendments

Rule 109 is a new rule, adopted in 2000. It is intended to collect and harmonize various provisions that apply to the procedure for in forma pauperis appeals. It is not intended to establish or modify any substantive rights to proceed in forma pauperis.

The rule requires that the application to proceed in forma pauperis in the Court of Appeals be submitted to the trial court for appropriate factual determinations. This requirement is consistent with the long-standing practice of the Court of Appeals. See, e.g., Maddox v. Department of Human Servs., 400 N.W.2d 136, 139 n.1 (Minn. App. 1987). This requirement is consistent with the general preference of having trial courts, rather than appellate courts, make factual findings, and also obviates any appearance that the appellate court has prejudged the merits of the appeal before the transcript, record and briefs have been prepared. Even without a transcript or briefs, the trial court will be familiar with the issues raised by the parties and may be familiar with their financial resources, and is, therefore, better able to make the required findings early in the appellate process. Minnesota Statutes, section 563.01, subdivision 3, defines "indigence" to include those receiving public assistance, being represented by a legal services attorney or volunteer attorney program on the basis of indigence, or having an annual income not greater than 125% of the poverty level. See 42 U.S.C. section 9902(2).

The requirement that a party seeking in forma pauperis relief establish that his or her appeal (or position on appeal, if such relief is being sought by a respondent) is "not frivolous" does not require a showing that the party is likely to prevail on appeal and does not require the trial court to evaluate the likelihood of success on appeal. In forma pauperis status in civil commitment and juvenile proceedings is based solely on indigency, and an indigent party is not required to establish that the position to be taken in the appellate court is not frivolous.

Rule 109.04 establishes procedures for seeking leave to proceed in forma pauperis in the Supreme Court. It permits a motion based on an order granting in forma pauperis status from the court whose decision is to be reviewed if accompanied by an affidavit that the party remains indigent.

Rule 109.05 provides for the suspension of the time periods to pay the filing fee, post a bond and file the transcript certificate while the trial court considers a motion to proceed in forma pauperis. A party who has made a timely motion to proceed in forma pauperis must file a copy of

that motion with the appeal papers. The trial court must rule on the motion promptly and the party must inform the appellate court of the ruling, so that the appeal can proceed without delay.

Advisory Committee Comment - 2016 Amendments

Rule 109 is amended to clarify that, although the rules do not require the posting of a cost bond for most appeals, a bond may be required by the trial court upon motion, and is required by statute and Rule 116 for appeal proceedings seeking review of decisions of the Workers' Compensation Court of Appeals. In these circumstances where a bond may be required, the granting of an in forma pauperis motion would exempt the party from having to pay for the required bond.